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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91252969
Party	Plaintiff Patxi's Limited
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Attachments	Reply Testimonial Declaration of Michael Nakhleh.pdf(119932 bytes) CERTIFICATE OF SERVICE.pdf(72090 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 88/533,955
For the Mark PATXI'S
Published in the *Official Gazette* on November 19, 2019

	X	
	:	Opposition No.: 91/252969
Patxi's Limited,	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	
Johnny K. Wang,	:	
	:	
Applicant.	:	
	X	

REPLY TESTIMONIAL DECLARATION OF MICHAEL NAKHLEH

MICHAEL NAKHLEH, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the principal shareholder and President of Opposer, Patxi's Limited. I make this reply testimonial declaration in further support of Opposer's case, and specifically to respond to the Testimonial Declaration of John A. Lofton, dated January 20, 2021, that Applicant submitted in this case. This reply testimonial declaration is made upon personal knowledge and I declare that all information contained herein is true, complete and correct. I submit this reply testimonial declaration as trial testimony in the matter on behalf of Opposer.

2. For purposes of context, Attorney Lofton has not filed an appearance in this case on behalf of Applicant. Attorney Lofton is counsel for plaintiffs in the litigation he references against Opposer Patxi's Limited and others in California Superior Court (the "North Case"). The North Case is a class-action lawsuit for employment practices brought on behalf of former employees of Patxi's restaurants, a type of lawsuit that is unfortunately all too common in

California where plaintiff's lawyers seek money from legitimate businesses without foundation. The Defendants in the North case believe that they have meritorious defenses to the action and the case remains pending at present. Regardless, the North case is totally unrelated to the present trademark Opposition, except that Applicant, Johnny Wang, is himself a former employee of Patxi's restaurants. As such, upon information and belief, Applicant, Mr. Wang, may qualify as part of the class action and have a financial interest in the outcome of the North Case.

My Testimony About Franchising of Patxi's

3. Contrary to Attorney Lofton's statements, my testimony in this case is not inconsistent with my prior statements in the North Case related to the issue of franchising of Patxi's restaurants.

4. Attorney Lofton cites to Interrogatory Responses in the North Case in which Patxi's Limited states that "there are no Patxi's franchises." (Lofton, Exh A., #6). In my prior Testimonial Declaration in this case, dated November 21, 2020, I stated: "Opposer also started growing the brand by starting a franchise system. The franchise system was an instant success as well. Over 20 franchises were sold in less than 12 months." (Dec. ¶ 5). In fact, both statements are true.

5. Opposer Patxi's Limited owns the stores but not the franchise rights. Opposer Patxi's Limited started the franchise system but the operations are conducted through a different corporate entity, Patxi's Franchise Corp. The Interrogatory Responses in the North Case were prepared by Patxi's Limited. Hence, it was true for Patxi's Limited to state that it had no franchise rights. All such rights existed and were sold under a different legal entity, Patxi's Franchise Corp.

6. Further, in my Testimonial Declaration, I stated that Opposer started growing the brand by starting a franchise system and that the franchise system was an instant success. (Id.). Again, this is all true; it is just that the legal entity that operates and owns the franchise rights is Patxi's Franchise Corp.

7. Nevertheless, all use of the PATXI's trademarks by Patxi's Franchise Corp. inures to the benefit of Opposer, Patxi's Limited by virtue of an agreement.

Attorney Lofton's Statements Do Not Relate to the Issues of Ownership and Superior Rights

8. In any event, Attorney Lofton's statements seeking to undermine my testimony are all a red herring and irrelevant. Attorney Lofton's statements are directed to the nature and extent of Opposer's trademark rights only with respect to the issue of franchising. As such, they do not relate to the key issue in this case, namely as between Opposer and Applicant, which entity in fact owns, and has prior and superior rights to, the trademark PATXI'S for restaurant services in the United States. On that point, Attorney Lofton's testimony is meaningless, and Applicant has not otherwise submitted any proof that would undermine or contradict Opposer's claim that it is the true and rightful owner of all rights in the PATXI'S trademark in the United States as successor in interest to companies that owned and maintained such rights at all relevant times since 2004.

9. As I stated in my original Testimonial Declaration, Opposer acquired all rights to the PATXI'S trademarks by virtue of an Asset Purchase Agreement in 2018 (Exhibit A). In the APA, the Sellers were two entities: (i) Patxi's Opco, LLC, which operated the Patxi's restaurants since 2004; and (ii) Layers, LLC, which among other assets, owned all rights in two U.S. Federal Trademark Registrations for the PATXI's trademarks: 4,233,418 for the PATXI's Logo Design

Mark; and 4,225,363 for the PATXI's word mark. Each of these Trademark Registrations were valid at the time of the APA, and the APA transferred to Opposer Patxi's Limited all rights in these Trademark Registrations, as well as all common law rights and goodwill associated with the PATXI's trademarks. (*See* APA ¶ 2.1(d) – Opposer Patxi's Limited acquired all defined “Intellectual Property Assets”).

10. As I stated in my original Declaration, each of the above-referenced Trademark Registrations went abandoned inadvertently in 2019 after Opposer acquired them. We simply failed to file the required maintenance documents by the required deadlines.

11. Unfortunately, that lapse in the Trademark Office allowed Applicant to file the accused Trademark Application Serial No. 88/533,955. Nevertheless, there is no dispute that Opposer has prior and superior rights to the mark PATXI's for restaurant services as against Applicant. Opposer maintains, and evidence submitted in this case has demonstrated, that PATXI's restaurants have been in continuous operation since 2004 to the present. To my knowledge the restaurants have never closed, not even during this past year during COVID. And as set forth above and in my original Declaration, Opposer is the true and rightful owner of all such rights in the PATXI's trademark for restaurant services.

12. Applicant has not put forward any evidence whatsoever that relates to the issue of ownership or priority of rights, nor has Applicant challenged Opposer's testimony and evidence about likelihood of confusion.

I hereby declare that the foregoing is true and correct under the penalty of perjury.

Executed: March 4, 2021

Michael Nakhleh

MICHAEL NAKHLEH

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply Testimonial Declaration of Michael Nakhleh will be sent to the Applicant, Johnny Wang, by email by agreement of the parties on March 4, 2021.

[JOHNNY K WANG](#)
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A handwritten signature in black ink that reads "Jed Ferdinand". The signature is written in a cursive style with a large, stylized "J" and "F".

Edmund J. Ferdinand, III